Attachment 5

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January 6, 2023

VIA ELECTRONIC FILING

Kimberly D. Bose
Secretary, Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: California Erosion and Sediment Control Plan; Lower Klamath Project, FERC Project No. 14803-001

Dear Secretary Bose:

On behalf of the co-licensees of the Lower Klamath Project, the Klamath River Renewal Corporation (Renewal Corporation) submits its California Erosion and Sediment Control Plan (CA ESCP) (**Attachment A**) in compliance with Ordering Paragraph V of the Commission's license surrender order.[1] The CA ESCP identifies erosion and sediment control best management practices to minimize pollution from sediment erosion caused by facilities removal and restoration activities that would take place in California.

The Renewal Corporation developed the CA ESCP in consultation with the California Regional Water Quality Control Board, California State Water Resources Control Board (SWB), Yurok Tribe, Karuk Tribe, and the Hoopa Tribe. The Renewal Corporation submitted the CA ESCP to the California agencies and the Tribes for review and comment on December 7, 2022. SWB staff provided comments to the Renewal Corporation on December 13, 2022. On December 22, 2022, the Renewal Corporation submitted a revised CA ESCP for SWB Deputy Director review and approval and received that approval on January 5, 2023 (see **Attachment B**). The California Regional Water Quality Control Board and the Tribes provided no further comment.

[1] *Order Modifying and Approving Surrender of License and Removal of Project Facilities*, 181 FERC ¶ 61,122 (November 17, 2022).

The Renewal Corporation respectfully requests Commission approval of CA ESCP on or before March 15, 2023. If the Commission requires any additional information with respect to the CA ESCP, please let us know.

Respectfully submitted,

s/ Markham A. Quehrn

Markham A. Quehrn
Perkins Coie LLP
Attorneys for Klamath River Renewal Corporation

s/ Richard Roos-Collins

Richard Roos-Collins
General Counsel, Klamath River Renewal Corporation

cc: Douglas L. Johnson, P.E.

ATTACHMENT A

California Erosion and Sediment Control Plan
(Dated December 2022)

Document Accession #: 20230106-5096 Filed Date: 01/06/2023

KLAMATH RIVER RENEWAL CORPORATION

Lower Klamath Project
FERC Project No. 14803

California Erosion and Sediment Control Plan

Klamath River Renewal Corporation
2001 Addison Street, Suite 317
Berkeley, CA 94704

Prepared by:
Camas LLC
680 G Street, Suite C
Jacksonville, OR 97530

December 2022

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Table of Contents

Appendices

1.0 Introduction

The California Erosion and Sediment Control Plan is a subplan of the Erosion and Sediment Control Plan that will be implemented as part of the Proposed Action for the Lower Klamath Project.

1.1 Purpose of Management Plan

The purpose of the California Erosion and Sediment Control Plan is to state measures the Renewal Corporation will implement to minimize upland erosion and sediment runoff to protect water quality in the portion of the Project within California. The California Erosion and Sediment Control Plan was developed in consultation with the State Water Resources Control Board (SWRCB), North Coast Regional Board, and appropriate Tribes. A consultation record is included as part of the Erosion and Sediment Control Plan.

1.2 Relationship to Other Management Plan Plans

The California Erosion and Sediment Control Plan is supported by elements of the following management plans for effective implementation: Waste Disposal and Hazardous Materials Management Plan, Reservoir Area Management Plan, and the Construction Management Plan. In addition, the 100% Design Drawings, submitted to the FERC in June 2022, include erosion and sediment control drawings. So as not to duplicate information, elements from these plans are not repeated herein but are, where appropriate, referred to in this California Erosion and Sediment Control Plan.

For in-water work BMPs and per the California Section 401 Water Quality Certification Condition 10 – Construction General Permit Compliance and Water Quality Monitoring and Protection Plans, the Renewal Corporation will develop Water Quality Monitoring and Protection Plans (WQMPPs). The WQMPPs outlines measures to control erosion, stream sedimentation, dust, and soil mass movement. The WQMPPs will be approved by the SWRCB prior to implementation.

2.0 Regulatory Background

The Clean Water Act (CWA) is the primary federal law that protects water quality in surface waters of the United States. Both Section 401 of the CWA, which regulates discharges of dredged or fill materials to waters of the U.S., and Section 402 of the CWA, which requires prevention of point source pollution and establishes the National Pollutant Discharge Elimination System (NPDES), include measures to address erosion and sediment control during construction activities in addition to post-construction stormwater management controls. The Renewal Corporation was issued a California Section 401 Amendment certificate in 2022 (https://elibrary.ferc.gov/eLibrary/search). The California CWA Section 401 certificate requires the Renewal Corporation to obtain a CWA Section 402 permit, General Construction Permit. In California, construction projects that disturb one or more acres of land are subject to the State's

NPDES Construction General Permit (CGP). In addition, the Renewal Corporation will receive a CWA Section 404 Individual Permit, prior to implementing the Proposed Action.

For purposes of establishing the CWA jurisdiction for a dam removal project the CWA Section 404 Individual Permit, "in-water work" is defined as work occurring at or below the Ordinary High-Water Mark (OHWM) for rivers and streams and the Normal Operating Pool Elevation (NOPE) for reservoirs. The OHWM is the line where the incised portion of the bank meets terrestrial vegetation (USACE 2016[1]). The NOPE is defined as the highest elevation that water is normally stored, or the elevation at which the reservoir should be operated for conservation purposes (Stanford [undated][2]).

The OHWM will change during the Project duration due to reservoir drawdown and dam removal. For pre-drawdown activities, in-water work will be defined by the existing OHWM for rivers and streams and by the existing NOPE for reservoirs. For drawdown and post-drawdown activities, in-water work will be defined by the new OHWM for the river, streams, and reservoirs (as they are being drawn down).

Due to the fluctuation in the OHWM during the Project implementation phases, it is necessary to clarify the jurisdictional boundaries between the Section 402 CWA, Section 404 CWA, and Section 401 CWA. This is primarily applicable to the currently inundated reservoir banks that will be exposed and converted to uplands following drawdown. The North Coast RWQCB issued a "Coordination of Permit Requirements for the Lower Klamath Project within the State of California" letter dated March 25, 2022 (see Appendix A), to clarify the jurisdictional boundaries between the Section 402 CWA, Section 404 CWA, and Section 401 CWA. In summary, this letter indicated "as long as the Project's activities and their associated water quality impacts are addressed by a Clean Water Act Section 401 Water Quality Certification (Water Quality Certification) or other applicable permits, and those Project activities are within the jurisdictional boundaries of a Clean Water Act Section 404 permit (404 Permit), Construction General Permit coverage is not necessary for those Project activities. Any other Project activities must comply with the Construction General Permit, as applicable." Therefore, the currently inundated reservoir areas are subject to the CWA 401 and CWA 404, and not the CWA 402 Construction General Permit for the Proposed Action.

3.0 California NPDES Construction General Permit

In California, erosion and sediment control measures are regulated under the California NDPES Construction General Permit through the preparation of a Stormwater Pollution Prevention Plans (SWPPPs). A SWPPP must be prepared by a Qualified SWPPP Developer (QSD), The Renewal Corporation will prepare a SWPPP, enroll and comply with the CGP for upland land disturbance activities of one or more acres. The CGP requires temporary and permanent BMPs

[1] USACE *Ordinary High Water Mark (OHWM) Delineation* Presentation, February 16, 2016

[2] Stanford University, *National Performance of Dams Program*, undated

and monitoring and sampling to regulate stormwater runoff to surface waters. To comply with the CGP, the SWPPP will identify all necessary erosion and sediment control measure and will be submitted via the online permit tracking platform (Stormwater Multiple Application and Report Tracking System [SMARTS]) to the North Coast Regional Water Quality Control Board (North Coast RWQCB) prior to construction. The SWPPP a live document, were the SWPPP QSD is required to update the erosion control methods into the SMARTS portal as they occur. The North Coast RWQCB has oversite responsibility and will conduct inspections throughout the construction term. The Renewal Corporation will provide immediate corrective actions to any inspection recommendations.

4.0 Reporting

Visual monitoring and reporting documentation will be submitted through the online GCP tracking system (SMARTS) as stipulated in the CGP.

Appendix A

North Coast RWQCB Letter

California Water Boards

Gavin Newsom
Governor

Jared Blumenfeld
Secretary for
Environmental Protection

North Coast Regional Water Quality Control Board

TO: Project Proponent and Interested Parties

FROM: Matthias St. John
Executive Officer
NORTH COAST REGIONAL WATER QUALITY CONTROL BOARD

DATE: March 25, 2022

SUBJECT: COORDINATION OF PERMIT REQUIREMENTS FOR THE LOWER KLAMATH PROJECT WITHIN THE STATE OF CALIFORNIA

The purpose of this memorandum is to clarify the California North Coast Regional Water Quality Control Board's (Regional Water Board) application of Order No. 2009-0009-DWQ, amended by 2010-0014-DWQ & 2012-0006-DWQ, (Construction General Permit) to the Lower Klamath Project (Project) in conjunction with other applicable permits to ensure efficient and effective protection of water quality in the Klamath Basin within the State of California. The Regional Water Board finds that so long as the Project's activities and their associated water quality impacts are addressed by a Clean Water Act Section 401 Water Quality Certification (Water Quality Certification) or other applicable permits, and those Project activities are within the jurisdictional boundaries of a Clean Water Act Section 404 permit (404 Permit), Construction General Permit coverage is not necessary for those Project activities. Any other Project activities must comply with the Construction General Permit, as applicable.

Background: The Project proponent (Klamath River Renewal Corporation) has applied for a 404 Permit from the U.S. Army Corps of Engineers San Francisco District and has applied for and was issued a Water Quality Certification by the State Water Resources Control Board's Division of Water Rights for the dredge and fill activities within waters of the United States. The dredge and fill activities are necessary to remove the three dams within the California portion of the Project and conduct the necessary restoration work for the Project, including portions of the Klamath River and its reconnected tributaries. The issued Water Quality Certification[1] includes conditions for the protection of water quality and state regulatory compliance, including actions specifically related to the control of sediment during and after construction and restoration related activities. The Regional Water Board, upon review of the Water Quality Certification conditions and the 404 Permit application, has determined that the Construction General Permit coverage is not necessary for activities that occur within the jurisdictional boundaries of the 404 Permit for the following five primary reasons:

[1] (https://www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/lower_klamath_ferc14803.html) i

1. Finding No. 23 of the Construction General Permit states, in part, that sites that intend to disturb one or more acres of land within the jurisdictional boundaries of a 404 Permit should contact the appropriate Regional Water Board to determine whether this permit applies to the site. The Regional Water Board, therefore, utilizes its discretion in deciding whether a project within the jurisdictional boundaries of the 404 Permit also will require coverage under the Construction General Permit to address water quality impacts, or whether it is more appropriate to address any impacts in a Water Quality Certification or other permit.

   Section 4.2.5 of the Regional Water Board's Basin Plan sets forth *The Policy in Support of Restoration in the North Coast Region*. This includes Resolution No. R1-2015-0001 (Restoration Policy)[2], which accomplishes the following:

   a) recognizes the important role that restoration plays in restoring and maintaining water quality;

   b) highlights some of the barriers that inhibit implementation of restoration projects;

   c) describes the work being done by the Regional Water Board and its staff to support restoration;

   d) describes the regulatory requirements for permitting restoration projects;

   e) provides direction on how the Regional Water Board and its staff will continue to promote and support restoration in the future; and

   f) recognizes that certain Project related temporary exceedances of water quality objectives may be allowed via an appropriate time schedule and practices that avoid and minimize adverse impacts to water quality, and a monitoring and reporting program must be implemented.

   In part, the Restoration Policy states that the Regional Water Board must take an active role in promoting the implementation of restoration projects that are expected to help restore the chemical, physical, and biological integrity of the waters within the North Coast Region. The Project is, at its core, a restoration project to establish the natural river functions and processes, including those of wetland and riparian habitat.

2. Section 4.2.6 of the Regional Water Board's Basin Plan provides guidelines for implementation of the Restoration Policy. It states, in part, that the Regional Water Board may permit or certify restoration projects that result in significant and sometimes unavoidable impacts (including temporary exceedances of water quality objectives) if it is shown that the project will result in long-term protection of beneficial uses and water quality and the project will incorporate appropriate time schedules that apply during the interim period when objectives are exceeded. The Water Quality Certificate includes a compliance schedule and Water Quality

[2] (https://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/restoration_policy/)

Monitoring and Adaptive Management criteria to address the temporary impacts related to the Project.

3. On April 7, 2020, the State Water Board issued the Project a Water Quality Certification that includes several conditions defining compliance expectations for land disturbance and restoration activities within the jurisdictional boundaries of the 404 Permit. The Water Quality Certification also includes provisions requiring that the Project implement a Water Quality Monitoring program, adaptive management measures, a compliance schedule to meet water quality regulatory requirements and restoration success, a description of permissible discharges, and Reservoir Area Management Plans that are specifically tailored for the success of the Project's restoration goals and to protect water quality. Some of the most relevant Conditions included in the Project's Water Quality Certification include:

   a) Condition 1 of the Water Quality Certification establishes the Project's site-specific Water Quality Monitoring and Adaptive Management criteria. The Water Quality Monitoring Plan shall include: 1) a monitoring program to assess Project impacts to water quality; 2) a reporting schedule; 3) adaptive management measures based on water quality monitoring results; and 4) provisions for collection and submittal of water quality data to inform the project proponent's implementation of a water quality compliance schedule (Condition 2).

   b) Condition 2 of the Water Quality Certification defines the Project's compliance schedule. Condition 2 states, in part, that discharges to the Klamath River that exceed sediment-related water quality objectives can temporarily occur during and following reservoir drawdown, dam removal, and associated sediment flushing activities. Using monitoring data from Condition 1, Condition 2 will also serve as a tool to assess short-term water quality impacts in the context of the long-term benefits gained from implementing the project and compliance with the Regional Water Board's Basin Plan. The compliance schedule defined in Condition 2 satisfies Section 4.2.6 of the Regional Water Board's Basin Plan for restoration related temporary exceedance of water quality objectives.

   c) Condition 10 of the Water Quality Certification establishes Construction General Permit Compliance and Water Quality Monitoring and Protection Plan requirements. Condition 10 requires enrollment in the Construction General Permit but states that, for any ground disturbance activities that could impact water quality and are neither addressed by the Construction General Permit nor addressed in other conditions of the Water Quality Certification, site specific water quality monitoring and protection plans shall be prepared and implemented following State Water Board's Deputy Director approval.

4. The jurisdictional boundaries of the 404 Permit are defined by the jurisdictional areas recognized as waters of the United States (US). The 404 Permit jurisdictional boundaries include existing waters of the US that will be restored to other types of waters of the US that existed prior to dam construction. This large-scale restoration from a reservoir ecosystem to a riverine aquatic ecosystem (water of the US) and upland terrestrial system (not a water of the US) that is described and regulated through the 404 Permit and Water Quality Certification will occur over the term of

these permits and provide the necessary water quality protection measures. The restoration project authorized and regulated by the Water Quality Certification includes reservoir draw down, removing infrastructure, and restoring uplands as well as restoring the river channel, floodplain, and associated wetlands and riparian areas. The Regional Water Board supports the use of the Water Quality Certification as the means of compliance for the restoration activities identified in the Water Quality Certification within the boundaries of the existing reservoir that are necessary to restore the river channel and associated ecosystems over the course of the term of the Water Quality Certification.

Conclusion:

In conclusion, the Regional Water Board has determined that the Project meets the requirements related to the control of construction related impacts associated with the activities within the existing reservoir jurisdictional boundaries of the 404 Permit due to the Water Quality Certification conditions providing the necessary water quality protection measures. Therefore, Klamath River Renewal Corporation does not need to additionally obtain Construction General Permit coverage for those portions of the Project within the jurisdictional boundaries of the 404 Permit and addressed by the Water Quality Certification. In support of the Project's restoration goals, the Regional Water Board intends to rely on the Water Quality Certification and State Water Board Deputy Director approved Water Quality Monitoring and Protection Plans for long term water quality compliance within the jurisdictional boundaries of the 404 Permit during the duration of the Water Quality Certificate permit term.

The Regional Water Board will require that those portions of the Project outside of the jurisdictional boundary of the 404 Permit with applicable land disturbance activities to obtain coverage and comply with the Construction General Permit in addition to other requirements the Project must comply with under the Water Quality Certification.

220325_LKP_CGP_Permit_Coordination_Memo

ATTACHMENT B

Letter from California Water Boards (Dated January 5, 2023)

California Water Boards

Gavin Newsom
Governor

Yana Garcia
Secretary for
Environmental Protection

State Water Resources Control Board

January 5, 2023

Ms. Laura Hazlett, Chief Operating Officer
Klamath River Renewal Corporation
Sent via Email: lhazlett@klamathrenewal.org

Lower Klamath Project License Surrender
Federal Energy Regulatory Commission Project No. 14803
Siskiyou County
Klamath River and associated tributaries

APPROVAL OF CALIFORNIA EROSION AND SEDIMENT CONTROL PLAN FOR LOWER KLAMATH PROJECT LICENSE SURRENDER

Dear Ms. Hazlett:

On December 7, 2022, the Klamath River Renewal Corporation (KRRC) submitted a request to the State Water Resources Control Board (State Water Board) Deputy Director of the Division of Water Rights (Deputy Director), to review and approve its California Erosion and Sediment Control Plan (California Erosion Plan). The California Erosion Plan was developed to satisfy a requirement of Condition 10 of the amended water quality certification (certification) issued for the Lower Klamath Project License Surrender (Project)[1]. On December 13, 2022, State Water Board staff provided comments to the KRRC regarding missing elements of the California Erosion Plan (e.g., best management practices and consultation requirements). On December 22, 2022, the KRRC submitted a revised California Erosion Plan for Deputy Director review and approval.

The purpose of the California Erosion Plan is to identify measures the KRRC will implement to minimize upland erosion and sediment runoff to protect water quality in the portion of the Project in California, beyond those measures required under Condition 10 of the water quality certification. Condition 10 requires the measures identified in the Construction General Permit[2] and identifies sources of additional best management

[1] The Executive Director for the State Water Board issued the Project certification on April 7, 2020, and the amended certification on November 3, 2022.
[2] State Water Board's National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land

practices (BMPs) in the November 2020 Definite Decommissioning Plan, *Water Quality Management for Forest System Lands in California – Best Management Practices* (USFS 2012), and California Department of Transportation's May 2017 *Construction Site Best Management Practices (BMP) Manual* (Caltrans BMP Manual) (Caltrans 2017). The California Erosion Plan indicates that it will implement the BMPs in the Construction General Permit, Waste Disposal and Hazardous Materials Management Plan, Reservoir Area Management Plan, 100% Design Drawings submitted to FERC in June 2022, and Construction Management Plan. The Historic Properties Management Plan includes a subset of these BMPs in its Erosion Control section and was developed in consultation with the Klamath Tribes, Shasta Indian Nation, Modoc Nation, Karuk Tribe, Yurok Tribe, Shasta Nation, Quartz Valley Indian Community of the Quartz Valley Reservation of California, Confederated Tribes of Siletz Indians of Oregon, Resighini Rancheria, Cher-Ae Heights Indian Community of Trinidad Rancheria, and the Hoopa Valley Tribe[3]. The Reservoir Area Management Plan additionally requires adherence to the procedures identified in the Historic Properties Management Plan related to discoveries of cultural resources on the historical pre-dam ground surface. California Erosion Plan's summary of these measures was developed in consultation with the State Water Board, North Coast Regional Water Quality Control Board, Hoopa Valley Tribe, Yurok Tribe, and Karuk Tribe.

The California Erosion Plan does not identify additional BMPs beyond those referenced above. Please note that approval of the California Erosion Plan does not cover approval of individual Water Quality Monitoring and Protection Plans that are required by Condition 10 and which the KRRC notes in the California Erosion Plan will be provided to the State Water Board for approval prior to implementation. These Water Quality Monitoring and Protection Plans may identify additional BMPs.

In summarizing the KRRC's erosion control responsibilities in California in one document and formally providing clarification as to where the State Water Resource Control Board's Construction General Permit applies, the California Erosion Plan submitted on December 22, 2022, complies with the requirement of Condition 10 of the amended Project certification and is hereby approved. The KRRC shall implement the California Erosion Plan upon receiving all necessary approvals. The KRRC shall file this approval with the Federal Energy Regulatory Commission (FERC). Any

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Disturbance Activities (State Water Board Order 2009-0009-DWQ, as amended by State Water Board Orders 2010-0014-DWQ, 2012-0006-DWQ, and 2022-0057- DWQ, as applicable), and ongoing amendments during the life of the Project

[3] As referenced in Section 1.2 of the Historic Properties Management Plan, consultation included teleconferences, in-person meetings, written correspondence, and emails that discussed various components of the Section 106 compliance process, including an invitation to consult, identification of an Area of Potential Effects, methods to identify historic properties, evaluation of cultural resources, and assessment of the Project's potential for effects to historic properties.

modifications to the California Erosion Plan shall be approved by the Deputy Director and filed with FERC prior to implementation.

If you have questions regarding this letter, please contact Oscar Biondi, by email at: Oscar.Biondi@waterboards.ca.gov. Written correspondence should be directed to:

State Water Resources Control Board
Division of Water Rights – Water Quality Certification Program
Attn: Oscar Biondi
P.O. Box 2000
Sacramento, CA 95812-2000

Sincerely,

Erik Ekdahl
Deputy Director

ec: Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
Via e-filing to FERC Docket P-14803-001

Ms. Lisa DeRose, Camas LLC
Email: lisa@camasllc.com

Mr. Richard Roos-Collins, Water and Power Law Group PC
Email: rrcollins@waterpowerlaw.com

Ms. Diane Barr, Camas LLC
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